

Employment and Training Administration, Labor

§ 655.1215

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the Attestation as provided in the Act and subparts L and M of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance, taking into account the public health, interest, or safety; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury or adverse effect upon the workers.

(c) The civil money penalty, back wages, and any other remedy determined by the Administrator to be appropriate, are immediately due for payment or performance upon the assessment by the Administrator, or the decision by an administrative law judge where a hearing is requested, or the decision by the Secretary where review is granted. The facility must remit the amount of the civil money penalty, by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance must be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violation(s) occurred. The payment of back wages, monetary relief, and/or the performance or any other remedy prescribed by the Administrator will follow procedures established by the Administrator. The facility's failure to pay the civil money penalty, back wages, or other monetary relief, or to perform any other assessed remedy, will result in the rejection by ETA of any future Attestation submitted by the facility until such payment or performance is accomplished.

(d) The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note), requires that inflationary adjustments to civil money penalties in accordance with a specified cost-of-living formula be made, by regulation, at least every four years. The adjustments are to be based on changes in the Consumer Price Index for all Urban Consumers (CPI-U) for the U.S. City Average for All Items. The adjusted amounts will

be published in the FEDERAL REGISTER. The amount of the penalty in a particular case will be based on the amount of the penalty in effect at the time the violation occurs.

§ 655.1215 How are the Administrator's investigation findings issued?

(a) The Administrator's determination, issued under § 655.1205(d), shall be served on the complainant, the facility, and other interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail. Where the complainant has requested confidentiality, the Administrator shall serve the determination in a manner which will not breach that confidentiality.

(b) The Administrator's written determination required by § 655.1205(c) shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor; prescribe any remedies or penalties including the amount of any unpaid wages due, the actions required for compliance with the facility Attestation, and the amount of any civil money penalty assessment and the reason or reasons therefor.

(2) Inform the interested parties that they may request a hearing under § 655.1220.

(3) Inform the interested parties that if a request for a hearing is not received by the Chief Administrative Law Judge within 10 days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge.

(5) Inform the parties that, under § 655.1255, the Administrator shall notify the Attorney General and ETA of the occurrence of a violation by the employer.